To date, Burger seems even more devoted to "judicial restraint" than its most renowned recent spokesmen, Justice John M. Harlan and the late Justice Felix Frankfurter. A court that consistently overrides popular wishes, Burger implies, invites the majority to take the law into its own hands. Yet the Warren court often acted because no other unit of Government was willing to take on festering grievances, and that situation may not have changed substantially. Although Burger urges leaving juvenile justice to the states, for example, the states have increasingly failed to meet the challenge. The result of Burger's approach could be a recipe not for restraint but for inaction.

Order in the Courtroom

In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.
—Sixth Amendment

But what if the accused turns his own trial into a soapbox, a shouting match or a near riot? If the judge ejects him, can he still be tried and convicted *in absentia*? With a stern yes, the Supreme Court last week upheld the power of trial judges to control unruly defendants by citing them for contempt, removing them from the courtroom or shackling and gagging them. The decision was an obvious response to the growing phenomenon of obstreperous defendants who mock all accepted rules for trial decorum. Wrote Justice Hugo Black: "Our courts, palladiums of liberty as they are, cannot be treated disrespectfully with impunity."

Constitutional Waiver. Although the decision dealt with conduct at a Chicago trial 13 years ago, the court clearly was also mindful of recent disruptions in another Chicago courtroom—Judge Julius Hoffman's. The decision appeared to vindicate some of Hoffman's responses to the angry Chicago Eight, including the binding and gagging of Black Panther Bobby Seale.

Two other beleaguered trial judges also had reason to be pleased with the decision. New York Supreme Court Justice John M. Murtagh in February had abruptly recessed a pretrial hearing for 13 boisterous Panthers accused of plotting to bomb public places in New York City. This week, armed with solid support for strict discipline plus notification from the defendants that they were ready to stand trial, Murtagh will resume their case. Just one day after the Supreme Court ruling, Philadelphia's Court of Common Pleas Judge Leo Weinrott was confronted with Defendant George Kenney, who kept yelling at potential jurors and told the judge to "go to hell" during the early stages of his trial for killing a liquor-store clerk during a holdup. After giving several warnings, Weinrott successfully silenced Kenney by ordering his mouth bandaged.

The Supreme Court's decision was instigated by William Allen, an obscure Chicagoan who was charged in 1956 with taking $200 from a bartender at gunpoint. At his trial, Allen told the judge, "You're going to be a corpse," and flung his court-appointed lawyer's files to the floor. After unheeded warnings, the judge expelled Allen from the courtroom. Allen was convicted of armed robbery, but later petitioned the federal district court from jail for relief on the grounds that he had been denied his right to confront his accusers. In last week's decision on Allen, the Supreme Court promulgated a new rule: a defendant who makes the progress of his trial impossible has effectively waived his constitutional right to confrontation, and can reclaim it only when he is willing to behave in the courtroom.

Unresolved Problems. Several important questions remain. What are the standards to measure "unruly conduct"? Allen had a history of mental incompetence and insisted that there would be no trial. His conduct bore little relation to that of the politically savvy defendants in the Chicago conspiracy trial. And what if the judge himself provokes the defendants into disruptive behavior? While Allen's trial judge was a model of patience and decorum, Judge Hoffman has been accused of goading the defendants and of denying Bobby Seale his constitutional right to representation by his lawyer. In a concurring opinion last week, Justice William O. Douglas suggested that the Supreme Court should have skipped the relatively unimportant Allen appeal and waited for a more pertinent "political" case to resolve the problems.

Whatever the answers, the court has firmly stated that a trial judge must be in command of the courtroom. "It would degrade our country and our judicial system," wrote Justice Black, "to permit our courts to be bullied, insulted and humiliated and their orderly process thwarted and obstructed by defendants brought before them."

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